



IN THE MATTER OF:

Complainant,

STEAK N SHAKE, INC.

CHARGE NO: 1999SN0638
EEOC NO: N/A
ALS NO: S-11205

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On August 7, 2000, Respondent filed a motion for summary decision, alleging in essence that it was entitled to a judgment as a matter of law because Complainant had conceded that he was not entitled to any relief under the Human Rights Act. Thereafter, Complainant's counsel was permitted leave to withdraw from the case, and on January 4, 2001, an Order was entered which directed Complainant to either file a response to the pending motion or a written intention to proceed with the case. Complainant, however, has not filed either a response to the motion for summary decision or a written notice of intent to proceed with the case. Moreover, Complainant has not filed a motion seeking an extension of time in which to comply with the Order of January 4, 2001.

Based upon the record in this matter, I make the following findings of fact:

1. On April 26, 2000, Complainant filed a Charge of Discrimination alleging that he was the victim of discrimination on the basis of his arrest record when Respondent suspended him without pay shortly after Respondent became aware that he had been arrested for criminal sexual assault and home invasion. Complainant also

alleged that Respondent failed to reinstate him to the restaurant where he was working prior to his suspension because of his arrest record.

2. On March 8, 2000, the Department of Human Rights filed the instant Complaint alleging on behalf of Complainant that Respondent discriminated against Complainant on the basis of his arrest record.

3. On August 7, 2000, Respondent filed a motion for summary decision, essentially arguing that it was entitled to a judgment as a matter of law on the issue of damages since Complainant had agreed through Requests for Admission of Facts that he was not entitled to any relief under the Human Rights Act. Thereafter, Complainant's counsel filed a motion to withdraw as counsel on behalf of Complainant. At the time of counsel's withdrawal Complainant had not filed a response to the pending motion for summary decision.

4. On January 4, 2001, an Order was entered which granted the motion by Complainant's counsel to withdraw from the case and further directed Complainant to file by January 31, 2001 either a response to the pending motion or a written intention to proceed with the case. The text of the Order further provided that Complainants' failure to comply with the terms of the Order subjected Complainant to the possibility of a future order dismissing the Complaint with prejudice for want of prosecution.

5. Complainant has not filed either a response to the pending motion or a written intention to proceed with the case as of the date of this Order. Moreover, Complainant has not filed a motion seeking additional time in which to comply with the Order of January 4, 2001.

Conclusions of Law

1. A complaint may be dismissed when a party engages in conduct that unreasonably delays proceedings. See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).

2. The Complainant has unreasonably delayed proceedings by failing to file either a response to the pending motion for summary decision or a written notice indicating an intention to proceed with his case.

3. The appropriate sanction for Complainant's failure to advance his case is dismissal of the Complaint and the underlying Charge of Discrimination.

Determination

The Complaint and the underlying Charge of Discrimination should be dismissed with prejudice due to Complainant's failure to file either a response to the pending motion for summary decision or indicate an intent to proceed with his case.

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a complaint be dismissed where a complainant engages in conduct that unreasonably delays or protracts proceedings. (See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, **Ramirez and Wesco Spring Company**, 40 ILL. HRC Rep. 266 (1988), and **Washington and Gateway Western Railway**, ___ Ill. HRC Rep. ___ (1992SN0630, May 29, 1996).

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay the instant proceedings. Specifically, Respondent filed a motion for summary decision which essentially alleged that Respondent was entitled to a finding in its favor as to all relief asserted by Complainant in the Complaint because: (1) Complainant failed to respond to Requests to Admit Facts stating that Complainant was not entitled to any relief under the Human Rights Act; and (2) Complainant's failure to file a timely response to the Requests to Admit Facts constituted an admission that Complainant indeed was not entitled to any relief under the Human Rights Act.

Moreover, given these admissions, Complainant was directed on January 4, 2001 to file by January 31, 2001 either an overdue response to the allegations made in the motion for summary decision or a notice of intent to proceed. Complainant has failed to comply with this directive despite being warned in the January 4, 2001 Order that the failure to do so may result in the entry of an order recommending that Complainant's cause of action be dismissed with prejudice for failure to prosecute his claim.

Perhaps Complainant's failure to file anything after the January 4, 2001 Order is understandable given the allegations in the motion for summary decision and the prospect that any further prosecution of this case would not garner him any monetary damages. However, Complainant cannot continue to do nothing with respect to the prosecution of his case, especially since Complainant has already received two opportunities to file a response in opposition to the pending motion for summary decision. Under these circumstances, I can only find that Complainant's failure to abide by Commission directives has resulted in an unreasonable delay and renders it difficult for the Commission to take any action with regard to the case except to dismiss it. See, for example, **Foster and Old Republic General Services Inc.**, ___ Ill. HRC Rep. ___ (1990CA2290, November 8, 1993).

Recommendation

Accordingly, I recommend that the instant Complaint and the underlying Charge of Discrimination of Mike McNeely be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 1st DAY OF May, 2001.

